tractor who was prepared to accept the job at a time when there was a building boom and other contractors preferred other jobs than the jobs in question. I cannot rely on the evidence of the defendants' witness Krist that the sewer diversion work should cost $40,280 and the earth embankment work $15,267. He did not visit the site to see the difficult terrain. He could of course work out the quantities of earth and filling required from the plans produced by the plaintiffs' architects but he based his costs on other tenders and I do not know if they were accepted tenders.

In the result the plaintiffs have proved their claim. The following sums are due from all the defendants:

A. Under clause 2(b) of the leases: —

(i) Sewer diversion	$ 99.500.00
(ii) Surveying & demarcation fee	180.00
(iii) Plan fee	12.00
(iv) Engineers' professional fees	4,125.00

B. Under clause 4(c) of the leases: —

(i) Earth embankment with close turfiing	65,900.00
(ii) Car park repairs and maintenance plus 10% under clause 2(f) of the leases.	3,040.60

The defendants, set out in paragraph 11 of the amended statement of claim, must pay the plaintiffs the increase of rent as shown in paragraph 12 of the amended statement of claim.

The plaintiffs will have judgment with interest and costs.

Claim allowed.

Solicitors: *Donaldson & Burkinshaw; Shook Lin & Bok.*

THE GREAT EASTERN LIFE ASSURANCE CO. LTD. v. GOH AH KOW t/a SINGAPORE DRY CLEANERS & ANOR.

[D.C.A. (Rajah J.) October 25, 1979]

[Singapore — District Court Appeal No. 2 of 1978]

Landlord & Tenant — Rent-controlled premises — Claim for possession — Whether second and third defendants in unlawful occupation of premises — Control of Rent Act (Cap. 266), ss. 3(1), 7 & 27(a) — Increase of Rent and Mortgage Interest (Restrictions) Act (U.K.), s. 3(1).

This appeal arose from a claim by the plaintiffs in the District Court against the first, second and third defendants for possession of premises known as No. 204 Orchard Road, Singapore. The said premises were controlled premises and they were let to the first defendant sometime during the Japanese Occupation.

The plaintiffs alleged that by a Notice to Quit dated February 22, 1952 the contractual tenancy of the first defendant was terminated on March 31, 1952, and that the Rent Conciliation Board had granted approval for the increased rent of $120 per mensem effective from April 1952. The plaintiffs claimed that the first defendant thereafter continued occupation of the said premises as a statutory tenant. The plaintiffs also alleged that by a Notice to Quit of November 2, 1976, the statutory tenancy of the first defendant was terminated on December 31, 1975. The plaintiffs claimed possession against the first defendant under section 27(a) of the Control of Rent Act, on the ground that the defendant was not in occupation of the premises and against the second and third defendants on the ground that they were unlawfully in occupation. On September 10, 1977, the first defendant consented to judgment. The trial then proceeded against the second and the third defendants.

The facts revealed that the second defendant had gone into occupation of the said premises towards the end of 1945 and that the third defendant was occupying part of the said premises, rent free, since 1959 after he had married the second defendant's daughter.

The learned district judge dealt with the five main issues and gave the respective answers: 1) that the second defendant was not an assignee of the first defendant but that he was occupying the premises by leave and licence of the first defendant; 2) that there had been created a new contractual tenancy, with effect from May 1, 1952, between the plaintiffs and the first defendant in respect of the premises at a new monthly rental of $120; 3) that the subsisting contractual tenancy of the first defendant had not been determined on December 31, 1976 as the plaintiffs had not proved that the second Notice to Quit had been served on the first defendant; 4) that the second and third defendants were in the circumstances of the instant case lawfully in occupation of the said premises; 5) that merely obtaining a consent judgment against the first defendant could not in the circumstances of this case enable the plaintiffs to obtain judgment against the second and third defendants.

Held, dismissing the appeal: once the second and third issues had been decided against the plaintiffs it follows that the plaintiffs had no cause of action against the first defendant either at the time of the issue of the summons or when the latter suffered judgment against himself and the fourth and fifth issues become irrelevant in determining the question whether the plaintiffs had proved their claim for possession against the second and third defendants.

Cases referred to:

(1) *Lum See On* v. *Chan Kit Yong* [1956] M.L.J. 40.

(2) *Summers v. Donohue* [1945] 1 All E.R. 599.

(3) *Kerr* v. *Bryde* [1923] A.C. 16.

(4) *Glossop* v. *Ashley* [1921] 2 K.B. 451 @ 456.

DISTRICT COURT APPEAL.

Kirpal Singh for the appellants.

Tommy S.T. Neo for the respondents.

Cur. Adv. Vult.

Rajah J.: This is an appeal which arises from a claim brought by the plaintiffs in the District Court against the 1st, 2nd and 3rd defendants for possession of premises known as No. 204 Orchard Road, Singapore. It was not in dispute that the premises are controlled premises and that they were let to the 1st defendant sometime during the Japanese Occupation.

The plaintiffs alleged that by a Notice to Quit dated February 22, 1952 the contractual tenancy of the 1st defendant was terminated on March 31, 1952, and that the Rent Conciliation Board had granted approval for the increased rent of $120 per mensem effective from April 1, 1952. The plaintiffs further alleged that the 1st defendant thereafter continued occupation of the said premises as a statutory tenant. The plaintiffs also alleged that by a second Notice to Quit, dated November 2, 1976, which was served by registered post at the said premises, the statutory tenancy of the 1st defendant was terminated on December 31, 1975. The plaintiffs claimed possession against the 1st defendant under section 27(a) of the Control of Rent Act, that is to say on the grounds

that he was not in occupation of the premises and against the 2nd and 3rd defendants on the ground that they were unlawfully in occupation.

The 1st defendant consented to judgment on September 10, 1977. The trial then proceeded against the 2nd and the 3rd defendants on the basis as claimed in the writ, i.e. that they were unlawfully in occupation. The 2nd and 3rd defendants denied that they were unlawfully in occupation.

It was not in dispute that the 2nd defendant had gone into occupation of the said premises sometime towards the end of 1945 and that the 3rd defendant was occupying part of the said premises, rent free, since 1959 after he had married the 2nd defendant's daughter. What was in dispute was the question whether the 1st defendant had assigned the said premises to the 2nd defendant or whether the 2nd defendant was on the said premises by leave and licence of the 1st defendant.

At the close of the hearing the learned trial judge dismissed the plaintiffs' claim with costs.

The main issues in the District Court trial were as follows: —

(1) Was there an assignment of the said premises by the 1st defendant to the 2nd defendant or was the 2nd defendant in occupation of the said premises by leave and licence of the 1st defendant.

(2) Had a new contractual tenancy been created as between the plaintiffs and the 1st defendant after the Rent Conciliation Board had granted approval for the increased rent of $120 per mensem effective from April 1, 1952 or was the 1st defendant a statutory tenant of the plaintiffs as from April 1, 1952.

(3) Did the second Notice to Quit dated November 2, 1976 served by registered post at the said premises determine the statutory tenancy of the 1st defendant.

(4) Were the 2nd and 3rd defendants in the circumstances of the instant case unlawfully in occupation of the premises.

(5) On the authority of *Lum See On* v. *Chan Kit Yong*[1] did the consent judgment suffered by the 1st defendant affect the position of the 2nd and 3rd defendants.

On the first issue, the learned trial judge found that the 2nd defendant was not an assignee of the 1st defendant but that he was occupying the premises by leave and licence of the 1st defendant.

On the second issue, the learned trial judge found that there had been created a new contractual tenancy, with effect from May 1, 1952, between the plaintiffs and the 1st defendant in respect of the said premises at a new monthly rental of $120.

On the third issue, he found that the subsisting contractual tenancy of the 1st defendant had not been determined on December 31, 1976 as the plaintiffs had not proved that the second Notice to Quit had been served on the 1st defendant.

On the fourth issue he found that the 2nd and 3rd defendants were in the circumstances of the instant case lawfully in occupation of the said premises.

On the fifth issue he found that merely obtaining a consent judgment against the 1st defendant could not in the circumstances of this case enable the plaintiffs to obtain judgment against the 2nd and 3rd defendants.

At the hearing of the appeal counsel for the plaintiffs (appellants) strenuously argued all five issues before me. However, in my view, nothing was advanced by counsel to induce me to interfere with the findings of the learned trial judge on the second, third, fourth and fifth issues which I whole-heartedly support.

On the second issue, counsel for the appellants contended that in all cases under section 7 of the Control of Rent Act (our Act) where it is necessary for the Rent Conciliation Board to intervene to fix rent the tenant who continues his tenancy after such fixing is a statutory tenant and continues to be one and, in such a case, it is not possible for the parties by consent to alter this position. He cited in support of his proposition the case of *Summers* v. *Donohue*.[2] In citing this case as authority for his proposition counsel has failed to appreciate that section 3(1) of the Increase of Rent and Mortgage Interest (Restrictions) Act (English Act) with regard to increase of rent of premises to which the English Act applies is not the same as section 3(1) of our Act with regard to increase of rent of controlled premises.

Section 3(1) of the English Act reads: —

"3.—(1) Nothing in this Act shall be taken to authorise any increase of rent except *in respect of a period during which but for this Act the landlord would be entitled to obtain possession*, or any increase in the rate of interest on a mortgage except in respect of a period during which, but for this Act, the security could be enforced."

Section 3(1) of our Act reads: —

"3—(1) Save as hereinafter in this Act provided it shall be unlawful for any landlord to increase or attempt to increase or to receive or recover a rent in respect of any tenancy of premises in excess of the rent fixed by an order of the Board, or, if no order has been made, in excess of the standard rent."

The effect of section 3(1) of the English Act is that an increase of rent under the English Act is not permissible in the case of a contractual tenant whilst his contractual tenancy is still in being, *Kerr* v. *Bryde*,[3] *Glossop* v. *Ashley*.[4] The vital words in the English section 3(1) are, "in respect of a period during which but for this Act the landlord would be entitled to obtain possession". These words do not appear in section 3(1) of our Act. In my view, the case of *Summers* v. *Donohue*[2] is not pertinent to the interpretation of sections 3 and 7 of our Act.

To my mind once the second and third issues are decided against the plaintiffs it follows that the plaintiffs had no cause of action against the 1st defendant either at the time of the issue of the summons or when the latter suffered judgment against himself and the fourth and fifth issues become irrelevant in determining the question whether the plaintiffs have proved their claim for possession against the 2nd and 3rd defendants.

I therefore dismissed the appeal with costs.

Appeal dismissed.

Solicitors: *Kirpal Singh & Co.; Tan Kim Seng & Co.*